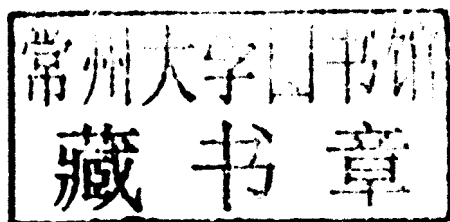


RAN HIRSCHL : CONSTITUTIONAL THEOCRACY

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CHAPTER ONE

The Rise of Constitutional Theocracy

The Holy One, blessed be He, waits for the nations of the world in the hope that they will repent, and be brought beneath His wings.

NUMBERS RABBAH (JEWISH MIDRASH, CIRCA SECOND CENTURY C.E.)

RELIGION and the belief in God have made a major comeback. Over the last few decades principles of theocratic governance have gained enormous public support worldwide.¹ From the fundamentalist turn in predominantly Islamic polities to the spread of Catholicism and Pentecostalism in the global South and to the rise of the Christian Right in the United States, it is hard to overstate the significance of the religious revival in late twentieth- and early twenty-first-century politics. Parties that advance religion-infused agendas have gained a tremendous popular following in polities as diverse as India, Israel, Malaysia, and Turkey. Christianity, meanwhile, has been growing exponentially in the so-called developing world.² The Roman Catholic population in Africa alone more than doubled between the mid-1970s and the mid-1990s, and in Asia it increased by 90 percent during that period.³ Religion-based morality continues to hover over much of the Catholic “old world,” from Latin America to the Philippines. The Orthodox Church has enjoyed a big resurgence in parts of Eastern Europe just as Russia has been struggling to control the spread of Islam in the northern Caucasus. The changing demographics of French society have given rise to serious challenges, raucous at times, to France’s assertive secularism. And one only needs to reach for the television remote control to appreciate the prevalence of Evangelical, born-again Christianity in the United States, with its scores of pastors, churches, and televised salvation ceremonies. All of this happens, lest we forget, as newspaper

headlines report on religion-based insurgency from Iraq and Afghanistan to Pakistan, Yemen, Somalia, and Indonesia on a near-daily basis; on how Hezbollah (the “party of God”) has effectively erected its own governing apparatus within Lebanon; on how the struggle between the nationalist Fatah movement and the religious Hamas movement has effectively split the Palestinian people; and on struggles between clerics and reformists in Iran. In short, the reports of God’s death, to paraphrase Mark Twain’s remark, have been greatly exaggerated.

At the same time, the world has witnessed the rapid spread of constitutionalism and judicial review. Constitutional supremacy, a concept that has long been a major pillar of the American political order, is now shared, in one form or another, by over 150 countries and several supranational entities across the globe. Most of these countries can boast the recent adoption of a constitution or a constitutional revision that contains a bill of rights and enshrines some form of active judicial review. Consequently, constitutional courts and judges have emerged as prominent translators of constitutional provisions into guidelines for public life. The international migration of constitutional concepts and structures has grown exponentially. At the uneasy intersection of these two sweeping trends—the tremendous increase of popular support for principles of theocratic governance and the global spread of constitutionalism—a new legal and political order has emerged: *constitutional theocracy*.

What is constitutional theocracy? In a pure theocracy (e.g., the Islamic state envisioned by the Prophet Muhammad in the early seventh century or its emulation in Mahdist Sudan of the late nineteenth century) the supreme religious leader is also the highest political leader. Law proclaimed by the ruler is also considered a divine revelation and hence the law of God. In a closely related ecclesiocracy (e.g., the Vatican) an ensconced institutional religious leadership is at the helm; the religious leaders assume a leading role in the state but do not claim to be instruments of divine revelation. In contrast, formal separation exists in constitutional theocracy between political leadership and religious authority. Power in constitutional theocracies resides in political figures operating within the bounds of a constitution rather than from within the religious leadership itself. Basic principles such as the separation of powers are constitutionally enshrined. The constitution also typically establishes a constitutional court that is mandated to carry out some form of active judicial review.

At the same time, constitutional theocracies defy the Franco-American doctrine of strict structural and substantive separation of religion and state. Like models of “establishment” or “state religion,” constitutional theocracies both formally endorse and actively support a single religion or

faith denomination. Moreover, that state religion is enshrined as the principal source that informs all legislation and methods of judicial interpretation. Unlike the handful of European countries that grant exclusive recognition and support to a given state religion, the designated state religion in constitutional theocracies is often viewed as constituting the foundation of the modern state; as such, it is an integral part, or even the metaphorical pillar, of the polity's national metanarrative. In this way religion often determines the polity's boundaries of collective identity, as well as the scope and nature of some or all of the rights and duties assigned to its residents.

Constitutional theocracies, however, do more than grant exclusive recognition and support to a given state religion: laws must conform to principles of religious doctrine, and no statute may be enacted that is repugnant to these principles. In most instances a well-developed nexus of religious bodies, tribunals, and authorities operates in lieu of, or in tandem with, a civil court system. The opinions and jurisprudence of these authorities and tribunals carry notable symbolic weight and play a significant role in public life. Importantly, however, this nexus of laws and institutions is subject to judicial review by a constitutional court or tribunal. This tribunal consists of judges who are often well versed in both general and religious law and can speak knowledgeably on pertinent matters of law to jurists at Yale Law School, as well as at al-Azhar, the center of Islamic learning in Cairo.

The ideal model of a constitutional theocracy can be summarized by outlining four main cumulative elements: (1) adherence to some or all core elements of modern constitutionalism, including the formal distinction between political authority and religious authority and the existence of some form of active judicial review; (2) the presence of a single religion or religious denomination that is formally endorsed by the state, akin to a "state religion"; (3) the constitutional enshrining of the religion and its texts, directives, and interpretations as *a* or *the* main source of legislation and judicial interpretation of laws—essentially, laws may not infringe on injunctions of the state-endorsed religion; and (4) a nexus of religious bodies and tribunals that often not only carry tremendous symbolic weight but are also granted official jurisdictional status on either a regional or a substantive basis and operate in lieu of, or in uneasy tandem with, a civil court system. Most important, their jurisdictional autonomy notwithstanding, some key aspects of religious tribunals' jurisprudence are subject to constitutional review by higher courts, often state created and staffed.

In all, hundreds of millions of people, perhaps as many as a billion, now live in polities or subnational units that either fall squarely within the definition of a constitutional theocracy or that feature many of the substantive characteristics and tensions of this legal order.⁴ From the early 1970s to

2000 alone, at least two dozen predominantly Muslim countries, from Egypt to Pakistan, declared Shari'a (Islamic law) "a" or "the" source of legislation.⁵ The more recent new constitutions of Afghanistan (2004) and Iraq (2005) reflect precisely that type of dual commitment to principles of Shari'a and to principles of human rights, constitutional law, and popular sovereignty.⁶ Although virtually none of these polities' constitutions was adopted in an authentic bottom-up, "we-the-people" fashion—in fact, quite the opposite is true in most cases—Islamization does reflect a set of values that a large portion of the population in these countries seems to support. In several other countries precepts of Islam have been incorporated into the constitution, penal code, and personal-status laws of subnational units, most notably in twelve Nigerian states, Pakistan's North-West Frontier Province, and Indonesia's Aceh, to varying degrees in two Malaysian states, and to an increasing extent in Russia's Chechnya and Dagestan. Much like the considerable variations within the so-called liberal democratic world, wide variation exists within the constitutional theocratic world in how central religion is in public life. Granted, Malaysia and Tunisia are a world apart from Iran or the Vatican in how lax or rigid the actual translation of religious principles into public life is. But in virtually all these countries religion not only plays a key collective-identity role but is also granted a formal constitutional status, serves as a source of legislation, whether symbolically or practically, and, more important, enjoys jurisdictional autonomy in matters extending from education and personal-status law to essential omnipresence in every aspect of life, law, and politics.

The prevalence of variations on constitutional theocracy in the predominantly Islamic world points to an interesting constitutional trajectory—perhaps anomalous from a Western hegemonic perspective—in such settings. Whereas much of the Western world has undergone a gradual political and constitutional confinement of religion since early modern times, the Islamic world of the last forty years seems to have taken the opposite route. Throughout most of the twentieth century nationalism and socialism were the two pillars of political discourse in North Africa, the Middle East, and Southeast Asia. With few exceptions, polities in these regions emerged from colonialism with surprisingly little reliance on religion or religious authorities. The secularist nationalism of Mahatma Gandhi and the leftist revolutionary independence movement in Algeria are two prominent examples. But religion has made a major comeback over the last few decades and is now a *de facto* and often a *de jure* pillar of collective identity, national metanarrative, and constitutional law in many predominantly Muslim countries in Asia, Africa, and the Middle East.

A further two billion people, perhaps as many as three billion, live in countries such as India, Indonesia, and Turkey where no particular religion is granted formal status, but where religious affiliation is a pillar of collective identity. The struggle to establish uniform personal-status law in formally secular but markedly religious India has been a perennial bone of contention in Indian constitutional law and politics. In half a dozen Indian states, to pick another example, strict restrictions on conversion from Hinduism have been introduced into law by the Hindu nationalist Bharatiya Janata Party (BJP). The fundamental mismatch between Turkey's constitutionally enshrined secularism and the manifested religious inclinations of most Turks has given rise to a frenzy of political and constitutional maneuvering in that country. In countries such as Israel, Sri Lanka, or parts of the former Yugoslavia religious affiliation is closely entangled with definitions of ethnicity, nationality, and citizenship. To that count one may add polities where, despite formal separation of church and state, long-standing politically systemized Catholic Church preeminence and religion-centric morality continue to loom large over the constitutional arena. The *de facto*, as opposed to *de jure*, boundaries of religion and state in these countries can be described as being blurred at best and are continually contested in both the political and the judicial spheres.

Regimes in these and other countries throughout the new world of constitutional theocracies have been struggling with questions of a profoundly foundational nature and have been forced to navigate between cosmopolitanism and parochialism, modern and traditional metanarratives, constitutional principles and religious injunctions, contemporary governance and ancient texts, and judicial and pious interpretation. More often than not, the clash between these conflicting visions results in fierce struggles over the nature of the body politic and its organizing principles. These tensions are evident in virtually every aspect of public life, from court hearings to university lectures, from crowded soccer stadiums to secluded board meetings, and from casual conversations in markets and street eateries to maneuvers in the upper echelons of politics.

All these countries face the sources of friction inherent in a constitutional theocracy—a potentially explosive combination by its very nature, and one that poses new challenges to conventional constitutional ideas about secularism, religious freedom, and the relationship between religion and the state. How, therefore, can a polity reconcile the principles of accountability and separation of powers and the notion of “we-the-people” as the ultimate source of sovereignty when the fundamental notion of divine authority and holy texts constitutes the supreme governing norm of

the state? Who should be vested with the ultimate authority to interpret the divine text, and on what grounds? What ought to be done when principles of modern constitutionalism and human rights collide with religious injunctions and support for theocratic governance? More generally, how can a polity advance principles of twenty-first-century government or run a modern economy when it treats ancient texts and pious authorities as a main source of legislation? And what is the place of courts in the new matrix of religion, state, and constitutionalism in a nonsecularist world?

Like early writings about the postcolonial world that tended to view postcolonial countries as a homogeneous bloc, populist academic and media accounts in the West tend to portray the spread of religious fundamentalism in the developing world as a near-monolithic, ever-accelerating, and all-encompassing phenomenon.⁷ The frequent formulation of this supposed dichotomy is that the West is largely secular and modernist, whereas the non-West is largely religious and traditionalist. According to this “civilizational” approach, a distinction between religion and state is deeply rooted in Christendom but does not exist in other major religions, certainly not in Islam. Moreover, in contrast to the Western portrayal of religion as private and relatively benign, “politicized” religions are depicted as a threat to reason and a hindrance to progress.⁸ The Islamic world, in particular, has been the target of much of this critique. Whereas the West is characterized as driven by a constant quest for modernism and progressiveness, Islam and Muslims have increasingly been depicted as insular and anticosmopolitan.⁹ The post-9/11 popular media followed suit by portraying Islamic societies as united by their religious zeal and antiliberal sentiment.

The reality, however, is more complex and nuanced, for the secular/religious divide is a continuum, not a binary, dichotomous classification. Europe has been the birthplace of secularism and the separation of church and state, but at the same time it has maintained, and is reluctant to forgo, its ultimate Christian predominance. And just as American society has multiple traditions and defining characteristics and thus may not be easily labeled either “modern” or “parochial,” most polities where principles of theocratic governance have gained public support may not be easily defined as fundamentalist, reactionary, or ultrareligious. Egypt, to pick one example, has witnessed tremendous growth in popular support for the Muslim Brotherhood. The prospects of further Islamization are real; even under extreme duress—the regime is doing everything it can, often at the expense of civil liberties and democracy, to contain the theocratic threat—political Islam was able to garner one-fifth of the votes in the 2007 parliamentary elections. But this is the same Egypt that attracts millions of tourists every year to some of the world’s cultural and natural wonders, as well

as millions more to party at the beaches of Sharm el-Sheikh, and that produced Anwar al-Sadat, initiator of the historic peace accord with Israel, Naguib Mahfouz, winner of the Nobel Prize in Literature, and Boutros Boutros-Ghali, former secretary general of the United Nations, among other world-class luminaries. Cairo is one of the most culturally vibrant cities in the Middle East. In 1980 Egypt's constitution was amended to introduce Shari'a as *the* (instead of "a") source of legislation. But this is also the Egypt that on December 31, 1999, hosted the world's largest outdoor concert to celebrate the new millennium, as well as five thousand years of Egyptian civilization—an audiovisual megaspectacle by French electronic music icon Jean Michel Jarre performed at the Grand Pyramids of Giza. Although the literary scene is regulated by government-appointed religious clerics, *The Yacoubian Building* by Alaa Al Aswany freely depicts homosexuality, corruption, and illegal abortion in Cairo and has become the best-selling Arabic novel in recent history.

These intriguing amalgams are widespread in religion-laden polities. The Justice and Development Party (Adalet ve Kalkınma Partisi, AKP), a moderately religious party, is now governing Turkey, a country whose constitution is arguably one of the most militantly secularist constitutions on offer. Iran—commonly perceived as a strict, fundamentalist Islamic republic—is the country where the first major antimonarchist constitutional revolution in the Middle East, dating back to 1906, took place. In 1993 the Iranian Majlis (parliament) approved the Free Zones Act, which established Kish Island, Qeshm Island, and the Port of Chabahar as the Free Zones of Iran: free-trade zones in Iran, each of which offers various perks to the international investor, such as full exemption from “Islamic banking” hurdles, tourist attractions, guaranteed repatriation of capital and accumulated profit in case of nationalization, and other benefits that are, by any stretch of the imagination, not fully compatible with a straightforward reading of Shari'a. In a much-heralded move in 2005, neighboring Kuwait adopted a law that for the first time in its history allows women to vote and to run for parliament. The new law also added, in a generic fashion, that both women voters and candidates must comply with Shari'a law norms. In 2009, four women, two of whom are vocal advocates of women's rights, were elected to the Kuwaiti parliament. Conservatives argued that women who serve in office must dress in accordance with Muslim religious law, with their heads covered. The struggle over women's dress code in parliament even found its way to Kuwait's Constitutional Court (I discuss this case in some detail in Chapter 4). The court had to determine the meaning of the requirement that women voters and elected representatives comply with Shari'a norms. More generally, it had to rule whether Kuwait is

governed by religious law, or whether Islam is merely the state religion. (The Constitution of Kuwait [1962] establishes that Islam is “the religion of the state,” and that Shari’a is “a main source of legislation.”)

Such existential tensions, of course, are not confined to the Islamic world. Israel is arguably one of the world’s capitals of embedded, near-oxymoronic contradictions of that nature. The very title of the utopian novel *Altneuland* (The Old New Land, 1902) by Theodor Herzl, the founder of political Zionism, captures some of these existential paradoxes. Israel defines itself as a Jewish and democratic state. Much has been written about this duality, how logically plausible it may be, given the fact that non-Jews make up approximately one-fifth of Israel’s citizenry, and how these two foundational tenets may be translated into a fairly coherent set of guidelines for public life. The Supreme Court of Israel has developed rich jurisprudence (which I discuss in some detail in Chapter 4) on formative questions such as “Who is a Jew?” for conversion purposes, the scope of naturalization rights for non-Jewish spouses of Israeli citizens, or the jurisdictional boundaries of rabbinical courts. But everyday-life episodes of the close entanglement of state and religion in Israel seem to tell the story of these complexities better than any grand philosophical accounts. In 2004 Professor Avram Hershko and Aaron Ciechanover of the Technion in Haifa, Israel, won the Nobel Prize in Chemistry for their discovery of ubiquitin-mediated protein degradation. This was the first-ever Nobel Prize awarded to a scientist working in an Israeli university and a foundational event for Israel’s scientific community, no doubt. (Israelis had won Nobel Prizes in Literature and Peace; Daniel Kahneman, an Israeli, had won the Nobel Prize in Economic Sciences while he was working at Princeton.) The Swedish Royal Academy happened to announce Hershko and Ciechanover’s prize on a Jewish holiday. Instead of holding a major press conference at the Technion, as one would expect, given the moment’s grandeur, Technion authorities had to host the press conference with the two laureates at Hershko’s private home. It was later revealed that the Technion’s rabbi would not allow the university to hold a press conference on the university’s premises during the Jewish holiday because by law all public institutions must remain closed on such days. Not even a historic Nobel Prize could change that divine call.

Meanwhile, several notable scholars and prominent politicians have argued that the preamble of a new European constitution should contain a reference to Europe’s “Judeo-Christian tradition” so as to avoid an artificial “Christian deficit” that would in turn hinder efforts to create an authentically European political community.¹⁰ In Catholic Europe, the continued prevalence of religious morality sends Poland and Ireland to frequent

rendezvous with the European Court of Human Rights (ECtHR). One had only to listen to the reaction of Prime Minister Silvio Berlusconi of Italy to the ruling of the ECtHR in November 2009 (discussed in some detail in Chapter 5) that called for ubiquitous crucifixes to be removed from Italian classrooms—he described it as a “nonsensical attempt to deny Europe’s Christian roots” and thus “unacceptable for us Italians”—to understand how Swiss voters’ 2009 endorsement of a constitutional amendment that bans the construction of new minarets in that country is anything but an idiosyncratic manifestation of embedded Christian dominance in Europe. And lest we forget, steps from where Berlusconi was speaking in Rome stands the Vatican, the world’s undisputed bastion of Catholicism. It has recently reformed its legal system so that as of January 1, 2009, Italian laws no longer apply automatically to the Vatican state (the Holy See). Instead, pertinent Italian laws will be examined by Vatican clerics to determine their compatibility with canon law and Catholic moral principles. This transformation alters the Lateran Pacts of 1929 that made Italian laws automatically applicable in the Vatican state. A senior Vatican canon lawyer, Monsignor José María Serrano Ruiz, has gone on record as saying that Italian laws are too many and too unstable and too often conflict with the moral teachings of the Catholic Church.¹¹

Another telling illustration of mixed commitments heralds from South East Asia. A person’s wish to convert from one religion to another is considered a private matter in most secular states. However, in Malaysia, things are not that simple. Malaysia is a multiethnic yet formally Islamic state that grants ethnic Malays (all of whom are Muslims) preferential treatment and protects the jurisdictional autonomy of Shari’a courts in an expansive list of personal-status matters pertaining to Muslims, including the politically sensitive issue of conversion to and from Islam. At the same time, religious freedoms for members of all other denominations are constitutionally guaranteed, as interracial harmony has long been the country’s official stance. This framework is inherently prone to existential constitutional clashes between the state religion and the rights of non-Muslims. A unique jurisprudential landscape has inevitably formed. In 2007, for example, Malaysia’s Federal Court held in the *Lina Joy* case that a Muslim-born woman who claimed to have converted to Christianity cannot convert from Islam to another religion at her own will but must ask the Syariah (Bahasa Malaysia or Malay for Shari’a) courts to contemplate her request and possibly risk a designation as an apostate. Confused? In Chapter 4 I discuss the war currently being waged between Malaysia’s Federal Court in charge of enforcing the constitution and its rights provisions and the Syariah courts, which, by law, adjudicate all matters pertaining to

personal status, inheritance, apostasy, child custody, and conversion to and from Islam.

The same year that *Lina Joy* was decided a Catholic newspaper in Malaysia used the word “Allah” to refer to God in its Malay-language edition. A controversy arose regarding who may use the word “Allah”—whether it is an exclusively Muslim word as some Muslim leaders in Malaysia suggest or a neutral term referring to One God that may be used by all regardless of their religion as the newspaper argued. A law to ban the use of the term in reference to God by non-Muslims was enacted in the 1980s, but had seldom been enforced prior to 2007. On December 31, 2009 (quite symbolically), the high court in Kuala Lumpur ruled that the ban on non-Muslims using the word “Allah” to refer to God was unconstitutional as it infringed on freedom of expression and freedom of religion principles. The court went on to state that the word “Allah” is the correct word for “God” in various Malay translations of the Bible, and that it has been used for centuries by Christians and Muslims alike in Arabic-speaking countries. This ruling was viewed by radical Islamists as a legitimization of deceitful attempts to convert Muslims to Christianity. Riots and church burning ensued. The government appealed the high-court ruling, and the implementation of the decision has been suspended until the appeal is heard.

Although core predicaments and jurisprudential clashes of that sort may be captivating, they do not capture all the complexities in such settings. The secular/theocratic rift itself is often not only about worldviews, modernism versus tradition, or sources of authority but also about distribution of material resources, access to government funding, and employment opportunities. To begin with, the potential of desecularized laws is in many respects bad for business. Religious directives are generally not very conducive to a modern market economy. Islam’s prohibition of interest or usury is only one illustration. Some religious directives are simply old, obsolete, or irrelevant in today’s high-tech markets. Others are based on individual or small-scale economic premises that are not suitable for a multitrillion-dollar, interconnected, globalized economy. Still others advance restrained or collectivist normative stands that are not in line with prevalent notions of megacapitalism, individualism, and conspicuous consumerism.

Because most religion-based economics are not in accord with modern economic theory, international markets, monetary bodies, and financial institutions—the World Trade Organization, the World Bank, and the International Monetary Fund, for example—are not keen on them. The tourism industry, perhaps with the exception of a few chain hotels in Rome, Jerusalem, or Mecca, resents it. (If one looks at the other side’s perspective, it is little wonder that the targets of so many incidents of sectarian violence have

been fancy hotels and resorts, from Sharm El-Sheikh to Mumbai and from Bali to Islamabad to Mombasa.) More generally, strict religious law is not helpful, to put it mildly, in supporting a country's international economic reputation. It would be reasonable to assume, for example, that despite the formal constitutional entrenchment of Shari'a precepts, most upper-class Qataris are not very enthusiastic about turning their heavenly paradise—Qatar is one of the most affluent places on earth—into a distinctly more religious polity that would require them to give up much of its impressive economic and international success. In Dubai, a member of the United Arab Emirates (UAE), Islam is a marker of collective identity, but ultra-conservative Islamic morality is not exactly the mantra Dubai's politicians or its investors and high-end commercial managers (for example, of Burj Khalifa, the tallest free-standing structure in the world, or Dubailand, the world's largest amusement park, twice as big as Disney World) wish to recite. Abu Dhabi (capital of the UAE) and Bahrain are two of the glossy locations of the Formula One world racing tour, with all the ultracommercialization that comes with it. Fly Emirates, as the commercial slogan goes. And, despite all the differences, the image of a predominantly religious polity clearly does not aid Turkey's bid to join the European Union.

But the political economy of the secular/religious divide stretches well beyond the apparent incompatibility of a conservative reading of religious precepts with principles of modern economy. As Ernest Gellner famously observed, the ruling classes in what he called agroliterate states often control state institutions and use artifacts like high culture or modernism to underwrite social structure, distancing themselves from nonmembers of the national elite.¹² This logic sheds light on some of the interests at play in the secularist/religious divide. A plausible but often-overlooked reason that secularists or moderates resent theocratic government is the potential redistributive implications of such a regime. In countries such as Israel, Malaysia, Turkey, and Egypt the clash between secularists and religionists has an important center-versus-periphery economic-distribution dimension to it. In terms of demographic indicators, support for religious parties in these countries is often closely associated with the relative have-nots and is distinctly more prevalent among occupiers of the sidelines, economic and cultural. Secularism and cosmopolitanism, on the other hand, are often associated with the metaphorical center. It often comprises old elites, the urban intelligentsia, and the managerial class and is characteristic of the relative haves, members of the upper socioeconomic echelons. Granted, support for religion-infused political agendas has not been confined to lower socioeconomic groups. In several instances religious parties, perhaps by virtue of their participation in the formal political process, are led by pragmatic

moderate leaders, not by fundamentalist zealots. Turkey's AKP and the similarly named Justice and Development Party in Morocco (Parti de la Justice et du Développement, PJD) illustrate this trend. Still, in virtually all pertinent settings religious parties draw many more followers from denizens of the political, economic, and cultural periphery than from occupants of the political, economic, and cultural core.

In short, principles of theocratic governance may pose a threat to the cultural propensities and policy preferences of secular-nationalist elites and the often-pragmatist bureaucracy and state apparatus, as well as of powerful economic stakeholders in these countries. Theocratic governance has seldom appealed to members of the often-cosmopolitan urban intelligentsia and the managerial class. At the same time, theocratic governance is also often at odds with principles of modern economics and may threaten the interests of major economic sectors and stakeholders. The contrast between the "Muezzin's call" and the "Dow Jones bell" is a telling metaphor in that respect.¹³ Pragmatic state bureaucrats may see theocratic governance as an impediment to progress and modernization. It would be an understatement to say that theocratic governments are not the type of regimes that find favor with supranational trade and monetary bodies. With few exceptions, theocracy has been and remains detested by the military—a symbol of modern nationalism in many developing polities. The powerful Turkish, Pakistani, and Algerian militaries are only three of many examples that come to mind here. The global spread of international human rights norms and watchdog organizations further pressures regimes to implement modernizing reforms and to limit the spread of distinctly antiliberal and antimodernist aspects of theocratic governance. Finally, the prospect of theocratic government has potentially far-reaching power-shifting implications, both symbolic and material.

From this an uneasy alliance of anti- or atheocratic forces emerges that seeks to tame the spread of religious fundamentalism and defuse attempts to establish a full-fledged theocracy. It comprises secularist or moderately religious political leaders and parties; statist bureaucrats; powerful economic stakeholders, corporations, and the managerial classes; judges and jurists; and, at times, the nationalist military. Each of these groups brings to the table its own worldviews, interests, and communities of reference, and at times there is an embedded distrust between two or more of them—for example, between state bureaucrats and free marketeers, or between supporters of political liberalization and the military (think Turkey or Pakistan). But the threat of theocratic governance drives these groups to leave their animosity toward each other for better days and to collaborate tacitly so as to keep their eyes on the religious ball, so to speak. At the same time, as support for religious parties and policies increases, religious

talk of some kind—and it had better come across as genuine—becomes ever more essential to maintaining some of these elites' popular legitimacy and political hegemony.

These conflicting pressures, opinions, and interests have led to intense constitutional maneuvering and interpretive innovation in polities that face deep rifts along secular/religious lines. Therefore, constitutional theocracy has emerged, to some extent as a genuine attempt at aspirational constitutionalism committed to a set of pious principles with a strong ideological outlook, but at the same time also driven, at least in part, by strategic, instrumentalist, irreverent constitutionalism aimed at containing the spread of theocratic government and bringing religious institutions under state control. Granting religion formal constitutional status is not only a legitimacy-enhancing move that appeases popular pressures; it also neutralizes religion's revolutionary sting, co-opts its leaders, ensures state input in the translation of religious precepts into guidelines for public life, helps mutate sacred law and manipulate religious discourse to serve powerful interests, and, above all, brings an alternative, even rival order of authority under state control and supervision.

A range of constitutional strategies have been developed by those who wield political power—and represent the groups and policy preferences that defy principles of theocratic governance—to hedge or mitigate the impact of religiosity on politics and public policy. This is done in different ways in different places because of variance in different countries' constitutional legacy, political culture, and power struggles. But taken as a whole, these forms of constitutional ingenuity allow non- or antitheocratic elites and leaders to talk the talk of commitment to religious values without walking much of the actual walk of that commitment. As a result, constitutional law and courts in virtually all such polities have become bastions of relative secularism, pragmatism, and moderation, thereby emerging as effective shields against the spread of religiosity and increased popular support for principles of theocratic governance. In other words, akin to constitutional democracy, where the former element establishes a core set of entrenched limitations on the scope, nature, and range of possible outcomes of the latter element, constitutionalism in predominantly religious settings plays a key role in curbing the spread and impact of theocratic governance, with its alternative worldviews, texts, and hierarchies of authority. Just as in constitutional democracy the “constitutional” keeps in check the “democracy” aspect, so does the “constitutional” in constitutional theocracy limit the spread of theocratic governance in settings prone to such expansion.

Formal establishment of religion may be portrayed as surrender to religion, but in reality it helps limit the potentially radical impact of religion